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| APPLICATION NO.                                     | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/790,324  | 02/27/2004  | Juliusz Polczynski   | PSP201              | 1950             |
| 7590 11/29/2005                                     |             |                      | EXAMINER            |                  |
| HORST KASPER<br>13 FOREST DRIVE<br>WARREN, NJ 07059 |             |                      | WALCZAK, DAVID J    |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3751                |                  |

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/790,324

Applicant(s)

POLCZYNSKI, JULIUSZ

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/17/04, 9/2/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Abstract***

The abstract of the disclosure is objected to because phrase that can be implied, such as "according to the present invention" should not be present therein. Correction is required. See MPEP § 608.01(b).

### ***Specification***

The disclosure is objected to because of the following informalities: On page 7, line 8, "block head 8" should be --block head 7--. Further, on page 8, line 6, "longitudinal and" should be --longitudinal end--. Lastly, on page 9, line 13, "plate 13" should be --plate 16-- and on page 9, line 16, one of the two periods at the end thereof should be deleted. Appropriate correction is required.

### ***Claim Objections***

Claim 4 is objected to because of the following informalities: On line 1 of claim 4, "claim one" should be --claim 1--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claims 1-4 and 7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to

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which it pertains, or with which it is most nearly connected, to make and/or use the invention. In regard to claim 1, the specification has not adequately defined how the toothbrush and case are formed, i.e., the phrase "a portion of uniform material" (line 2 of claim 1) is not clear. For example, it is unclear as to whether or not this phrase indicates that the handle, brush and case are integrally formed from one piece of material or if these elements are made from the same material, but are separately formed and then assembled. In regard to claims 3 and 7, it is unclear as to how the claimed device can be used, i.e., viewing Figure 1, should the case be hingedly attached to the block head, it does not appear that a user could safely use the device to brush teeth. It appears that the case would have to enter a user's mouth in order to enable the bristles to contact teeth and the size of the case would most likely inhibit the bristles from contacting all of the teeth and would also likely choke a user.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claim 12, it is unclear as to whether or not the rib defined therein is intended to refer to the rib defined in claim 10, or a different rib.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Slater. In regard to claim 1, Slater discloses a "single use" toothbrush comprised of uniform portion of material 6 forming a handle 30, a brush 14 and a "case" the bent portion of the device between the handle and brush. In regard to claim 3, the "case" "swings" relative to the brush (see the paragraph bridging columns 1 and 2). In regard to claim 4, the case "surrounds" the brush.

Claims 5, 6 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Tuseth. In regard to claim 5, Tuseth discloses a toothbrush comprised of a handle 12, a block head 13, a brush 16 attached to the blockhead and a case 23 attached to the blockhead for enclosing the brush. In regard to claim 6, toothpaste (disposed in sack 17) is positioned at the bottom of the case. In regard to claim 14, a plate 15 is disposed on the block head 13 wherein the bristles protrude therefrom.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuseth. Tuseth discloses a "single use" toothbrush comprised of a handle 12, a brush 16 and a case 23 filled with an agent (in sack 17) for cleaning teeth wherein the case surrounds the brush. Although the Tuseth reference does not disclose the

materials used to make the brush, the Examiner takes official notice that such toothbrushes are commonly comprised of elements (i.e., bristles, handles, covers, etc.) that are formed from plastic materials in order to render the manufacturing of the device simple and inexpensive. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the various parts of the Tuseth brush from a plastic material in order to enable the device to be easily and inexpensively manufactured, especially since the Tuseth reference does disclose that the various components can be made from any suitable material (see column 3, lines 5-10). Should these various elements be made from plastic, it can be said that these elements are made from a "portion of uniform material".

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tuseth in view of Oviatt. Although the case in the Tuseth device is not disclosed as being hinged to the blockhead, attention is directed to the Oviatt reference, which discloses another toothbrush wherein the cap 25 is hingedly attached to the toothbrush for the inherent benefit of enabling the cap to remain attached thereto and thereby cannot be misplaced. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to hingedly attach the case to the toothbrush (at a convenient location) disclosed by Tuseth in order to enable the case the remained attached to the brush.

Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuseth in view of Levin. Although the Tuseth reference does not disclose the structure of the handle 12, attention is directed to the Levin reference, which discloses another

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toothbrush wherein the handle includes a channel having braces 30, 36 extending perpendicular thereto and a rib 18 extending in the direction of the channel and perpendicular to a "floor" 46 of the channel wherein the rib connects the block head 12 and the "bottom" of the channel. Further, the width of the rib decreases from the channel to the block head. Such a handle renders the toothbrush safe in that the handle cannot be sharpened. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the handle in the Tuseth device as such in order to prevent the handle from being sharpened.

### ***Allowable Subject Matter***

Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Algorri reference is cited for disclosing another toothbrush having toothpaste in a case which covers the brush.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
11/25/05